

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

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|---|---|-----------------------------|
| TYRONE MILLER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Civil No. 12-609-CJP |
| |) | |
| MICHAEL J. ASTRUE, |) | |
| Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM AND ORDER

PROUD, Magistrate Judge:

This matter is now before the Court on the parties' Stipulation to Remand. (**Doc. 22**).

There are only two avenues for remanding a social security case. Remand can be ordered pursuant to sentence four or to sentence six of 42 U.S.C. § 405(g). A sentence four remand depends upon a finding of error, and is itself a final, appealable order. In contrast, a sentence six remand is for the purpose of receipt of new evidence, but does not determine whether the Commissioner's decision as rendered was correct. A sentence six remand is not an appealable order. See, *Melkonyan v. Sullivan*, 501 U.S. 89 (1991); *Perlman v. Swiss Bank Corporation Comprehensive Disability Protection Plan*, 195 F.3d 975, 978 (7th Cir. 1999).

Here, the parties stipulate that this case should be remanded pursuant to sentence four. In accordance with *Schaefer v. Shalala*, 509 U.S. 292, 302-303 (1993), judgment will be entered in favor of plaintiff.

The Court notes that Mr. Miller applied for benefits in January, 2008. (Tr. 244). The application was denied by an ALJ, but was remanded by the Appeals Council. The decision denying the application after remand was issued in April, 2011. (Tr. 7-15). Administrative

remedies were not completed until April, 2012, when the Appeals Council denied review. (Tr.

1). The Court recognizes that the agency has a full docket. However, in view of this procedural history, the Court urges the Commissioner to expedite this matter to the extent practicable.

For good cause shown, the parties' Stipulation to Remand (**Doc. 22**) is **GRANTED**.

The final decision of the Commissioner of Social Security denying Tyrone Miller's application for social security benefits is **REVERSED and REMANDED** to the Commissioner for rehearing and reconsideration of the evidence, pursuant to sentence **four** of 42 U.S.C. §405(g).

The Clerk of Court is directed to enter judgment in favor of plaintiff.

IT IS SO ORDERED.

DATED: December 21, 2012

s/ Clifford J. Proud
CLIFFORD J. PROUD
U.S. MAGISTRATE JUDGE